



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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## Schedule for Rule Making 2005

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 31 '04	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05
Jan. 14 '05	Feb. 2	Feb. 22	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
***May 18***	June 8	June 28	July 13	July 15	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '06
***June 29***	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sept. 14	Oct. 19	Jan. 16 '06
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 9	Sept. 28	Nov. 2	Jan. 30 '06
July 29	Aug. 17	Sept. 6	Sept. 21	Sept. 23	Oct. 12	Nov. 16	Feb. 13 '06
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '06
***Aug. 24***	Sept. 14	Oct. 4	Oct. 19	Oct. 21	Nov. 9	Dec. 14	Mar. 13 '06
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 4	Nov. 23	Dec. 28	Mar. 27 '06
Sept. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '06	Apr. 10 '06
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 2	Dec. 21	Jan. 25 '06	Apr. 24 '06
Oct. 21	Nov. 9	Nov. 29	Dec. 14	***Dec. 14***	Jan. 4 '06	Feb. 8 '06	May 8 '06
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Dec. 30	Jan. 18 '06	Feb. 22 '06	May 22 '06
***Nov. 16***	Dec. 7	Dec. 27	Jan. 11 '06	Jan. 13 '06	Feb. 1 '06	Mar. 8 '06	June 5 '06
Dec. 2	Dec. 21	Jan. 10 '06	Jan. 25 '06	Jan. 27 '06	Feb. 15 '06	Mar. 22 '06	June 19 '06
***Dec. 14***	Jan. 4 '06	Jan. 24 '06	Feb. 8 '06	Feb. 10 '06	Mar. 1 '06	Apr. 5 '06	July 3 '06
Dec. 30	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, May 6, 2005	May 25, 2005
25	Wednesday, May 18, 2005	June 8, 2005
26	Friday, June 3, 2005	June 22, 2005

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

\*\*\*Note change of filing deadline\*\*\*

## PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
FROM: Kathleen K. West, Iowa Administrative Code Editor  
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, May 10, 2005, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

#### **ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Department organization, 1.2(4), 1.3, 1.4(1)“a” to “e,” 1.4(2)“a” to “c,” 1.4(3) to 1.4(6), Filed **ARC 4123B** ..... 4/27/05  
 Granting of waivers, 9.4, Filed **ARC 4103B** ..... 4/13/05  
 Family and medical leave Act (FMLA) leave, 63.4(13), 63.9(9), 63.9(10), Notice **ARC 4107B** ..... 4/13/05  
 Disposal of state surplus property, 111.1, 111.2, Notice **ARC 4124B** ..... 4/27/05

#### **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Motor vehicle fuel and antifreeze tests and standards, 85.33, Filed **ARC 4112B** ..... 4/13/05

#### **CAPITAL INVESTMENT BOARD, IOWA[123]**

Investment tax credits, 4.1 to 4.10, 4.13 to 4.16, Notice **ARC 4113B**, also Filed Emergency **ARC 4114B** ..... 4/13/05

#### **COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]“umbrella”

Approval of postsecondary schools, ch 21, Filed **ARC 4109B** ..... 4/13/05

#### **EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]“umbrella”

Family and consumer sciences endorsement, 14.141(10), 16.1(1)“d” and “e,” Notice **ARC 4126B** ..... 4/27/05  
 Special education endorsements, 15.2(1) to 15.2(5), 15.2(8) to 15.2(10), Notice **ARC 4127B** ..... 4/27/05

#### **EDUCATION DEPARTMENT[281]**

Selling of goods and services by department officials, 1.5, Notice **ARC 4099B** ..... 4/13/05  
 Unsafe school choice option, 11.3(1), Notice **ARC 4098B** ..... 4/13/05

#### **HUMAN SERVICES DEPARTMENT[441]**

Report of dependent adult abuse evaluation, 176.6(5), 176.7, Notice **ARC 4108B** ..... 4/13/05

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WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Elevators—fees, 75.1(1), 75.1(2), 75.3(5), 75.4, 75.7, Notice **ARC 4121B** ..... 4/27/05  
 Elevators—alterations, 76.7, Notice **ARC 4122B** ..... 4/27/05

#### **LOTTERY AUTHORITY, IOWA[531]**

Monitor vending machines—advertisements, 14.13(2) to 14.13(5), 14.14(1)“b,”  
 14.14(2) to 14.14(4), Notice **ARC 4096B**, also Filed Emergency **ARC 4097B** ..... 4/13/05

#### **NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

RN and LPN licensure, 3.1, 3.4(3)“a”(2), 3.4(3)“b”(1) to (8), 3.4(4)“a”(2)“2” to “9,”  
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#### **PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Behavioral science examiners, 31.1, 31.8“6,” 31.10(1), 31.10(3), 31.10(5), 31.10(7), 31.10(8),  
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- Athletic training examiners, 352.2(32), Notice **ARC 4095B** ..... 4/13/05

**PUBLIC SAFETY DEPARTMENT[661]**

- Support and anchoring systems for manufactured homes, 16.626, 16.627,  
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- Fire safety requirements for hospitals and health care facilities, rescind 5.900 to 5.925;  
adopt ch 205, Notice **ARC 4125B** ..... 4/27/05

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- Sanctions for parking violations, 4.30(5), 4.31(2), Notice **ARC 4111B** ..... 4/13/05
- Uniform rules of personal conduct; hearing examiners appointed by  
university presidents, 9.1 to 9.3, Notice **ARC 4110B** ..... 4/13/05

**REVENUE DEPARTMENT[701]**

- Implementation of streamlined sales and use tax agreement, 231.14, 231.15(1), 231.15(2),  
231.15(4) to 231.15(6), adopt ch 240, Notice **ARC 4129B** ..... 4/27/05

**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

**EDITOR'S NOTE: Terms ending April 30, 2007.**

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Gary Dickey Jr.  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 11  
Des Moines, Iowa 50319

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Leave, 63.4(13), 63.9 IAB 4/13/05 <b>ARC 4107B</b>	Conference Room 04, Level A-South Hoover State Office Bldg. Des Moines, Iowa	May 3, 2005 11 a.m.
Disposal of state surplus property, 111.1, 111.2 IAB 4/27/05 <b>ARC 4124B</b>	Conference Room 04, Level A-South Hoover State Office Bldg. Des Moines, Iowa	May 17, 2005 11 a.m.

**EDUCATIONAL EXAMINERS BOARD[282]**

Family and consumer sciences endorsement, 14.141(10), 16.1(1) IAB 4/27/05 <b>ARC 4126B</b>	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 17, 2005 1 p.m.
Special education endorsements— rescission of requirements no longer applicable, 15.2 IAB 4/27/05 <b>ARC 4127B</b>	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 17, 2005 1:30 p.m.

**EDUCATION DEPARTMENT[281]**

Sales of goods or services by department officials, 1.5 IAB 4/13/05 <b>ARC 4099B</b>	Second Floor South Conference Room Grimes State Office Bldg. Des Moines, Iowa	May 4, 2005 2 p.m.
Unsafe school choice option, 11.3(1) IAB 4/13/05 <b>ARC 4098B</b>	Conference Room 2 Southwest Grimes State Office Bldg. Des Moines, Iowa	May 11, 2005 2 p.m.

**LABOR SERVICES DIVISION[875]**

Elevators—installation inspection and permit fees, 75.1, 75.3, 75.4, 75.7 IAB 4/27/05 <b>ARC 4121B</b>	Capitol View Conference Room 1000 E. Grand Ave. Des Moines, Iowa	May 19, 2005 1:30 p.m. (If requested)
Elevators—alterations, 76.7 IAB 4/24/05 <b>ARC 4122B</b>	Capitol View Conference Room 1000 E. Grand Ave. Des Moines, Iowa	May 19, 2005 1:30 p.m. (If requested)

**LOTTERY AUTHORITY, IOWA[531]**

Monitor vending machines, 14.13, 14.14 IAB 4/13/05 <b>ARC 4096B</b> (See also <b>ARC 4097B</b> )	2015 Grand Ave. Des Moines, Iowa	May 4, 2005 10 a.m. (If requested)
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**NURSING BOARD[655]**

Licensure, 3.1, 3.4, 3.5, 3.7, 4.6, 4.11 IAB 4/13/05 <b>ARC 4106B</b>	Des Moines West Room Holiday Inn Downtown 1050 Sixth Ave. Des Moines, Iowa	June 1, 2005 6:30 p.m.
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**NURSING BOARD[655] (Cont'd)**

License renewal fee, 3.1 IAB 4/13/05 <b>ARC 4105B</b>	Des Moines West Room Holiday Inn Downtown 1050 Sixth Ave. Des Moines, Iowa	June 1, 2005 6:30 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Marital and family therapists and mental health counselors, amendments to chs 31, 32, 34 IAB 4/13/05 <b>ARC 4092B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 3, 2005 10 to 11 a.m.
Marital and family therapists and mental health counselors— licensure and discipline, amendments to ch 31; 33.2(31) IAB 4/13/05 <b>ARC 4093B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 3, 2005 10 to 11 a.m.
Funeral directors, amendments to chs 101, 102, 105 IAB 4/13/05 <b>ARC 4101B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 10, 2005 9:30 to 10:30 a.m.
Funeral directors—licensure and discipline, 101.2, 101.4, 101.5, 101.8, 103.3(13) IAB 4/13/05 <b>ARC 4102B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 10, 2005 9:30 to 10:30 a.m.
Massage therapists, amendments to chs 131, 133, 135 IAB 4/27/05 <b>ARC 4120B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 17, 2005 10 to 11 a.m.
Massage therapists—licensure and discipline, 131.2, 131.4, 131.5, 133.2, 133.3, 134.2(31) IAB 4/27/05 <b>ARC 4119B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 17, 2005 10 to 11 a.m.
Nursing home administrators, amendments to chs 141, 143, 145 IAB 4/27/05 <b>ARC 4118B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 17, 2005 9 to 10 a.m.
Nursing home administrators— licensure and discipline, 141.2, 141.4, 141.5, 144.2(33) IAB 4/27/05 <b>ARC 4117B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 17, 2005 9 to 10 a.m.
Athletic trainers, amendments to chs 351, 352, 354 IAB 4/13/05 <b>ARC 4094B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 3, 2005 9 to 10 a.m.
Athletic trainers—discipline, 353.2(32) IAB 4/13/05 <b>ARC 4095B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 3, 2005 9 to 10 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Fire safety requirements for hospitals and health care facilities, rescind 5.900 to 5.925; adopt ch 205 IAB 4/27/05 <b>ARC 4125B</b>	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	May 19, 2005 10 a.m.
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**PUBLIC SAFETY DEPARTMENT[661] (Cont'd)**

Support and anchoring systems for manufactured homes, 16.626, 16.627, 16.629 IAB 4/13/05 <b>ARC 4115B</b> (See also <b>ARC 4116B</b> )	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	May 17, 2005 10 a.m.
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**REGENTS BOARD[681]**

Uniform rules of professional conduct; hearing examiners appointed by university presidents, 9.1 to 9.3 IAB 4/13/05 <b>ARC 4110B</b> (ICN Network)	N147 Lagomarcino Hall Corner of Knoll Rd. and Pammel Dr. Iowa State University Ames, Iowa	May 6, 2005 2 to 4 p.m.
	130 Schindler Corner of Hudson Rd. and 23rd St. University of Northern Iowa Cedar Falls, Iowa	May 6, 2005 2 to 4 p.m.
	107 North Hall End of N. Madison St. University of Iowa Iowa City, Iowa	May 6, 2005 2 to 4 p.m.

**UTILITIES DIVISION[199]**

Quality of service reporting by eligible telecommunications carriers, 39.3(1), 39.5 IAB 3/16/05 <b>ARC 4064B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	May 11, 2005 9 a.m.
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**CITATION of Administrative Rules**

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

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## ARC 4124B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 111, "Disposal of State Personal Property," Iowa Administrative Code.

New rule 11—111.2(8A) establishes procedures for inspecting, selecting, and removing personal property under the control of the Director from state agencies or from state storage. Comments received on this topic have addressed the need for a cost-effective, fair, ethical, and open process for disposal of surplus state personal property, and especially the need for a process that would take into account the unique issues regarding disposal of personal property located outside of the Des Moines area. Other comments concerned how the difference between surplus property and scrap is determined and whether all the proceeds from the sale of surplus property must go to the general fund of the state if there are contrary directives such as a condition required by the source of the procurement funding or charter agency agreements.

These proposed amendments have taken into account those comments, along with input from the Attorney General's office, the Auditor's office, the Ethics and Campaign Disclosure Board office, Iowa Prison Industries and the Administrative Rules Review Committee.

The Department presently has a surplus property program agent agreement with Iowa Prison Industries.

There will be a public hearing on May 17, 2005, at 11 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on May 17, 2005. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail [Carol.Stratemeyer@iowa.gov](mailto:Carol.Stratemeyer@iowa.gov).

These amendments are intended to implement Iowa Code sections 8A.321(5) and 8A.324.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 11—111.1(8A) by adding the following **new** definitions in alphabetical order:

"Hazardous materials" or "hazardous waste" means personal property that requires special handling and a special disposal fee based on state or federal regulations.

"Personal property" means anything of value belonging to the state, other than real property, under the control of the director. Tangible personal property that becomes part of realty is not personal property.

"Scrap" means personal property, such as equipment and supplies, that is to be disposed of because it does not have sufficient value to justify preparing it for reuse or reprocessing. Scrap may be recycled or sold.

"State surplus" or "surplus property" means items of personal property, such as equipment and supplies, for which state agencies no longer have a business use, but that have some reuse value. "State surplus" does not mean personal property that an agency uses as a trade-in or that is transferred from one agency to another agency when the receiving agency has a business use for the property.

"State surplus property program" means the program authorized under Iowa Code chapter 8A for the director to dispose of state surplus property.

"Surplus property program agent" means a not-for-profit organization or governmental agency that has entered into an agreement with the department to dispose of state surplus.

"Surplus property staging area" means an area within each building on the capitol complex where surplus property, other than vehicles, is accumulated for pickup.

ITEM 2. Add the following **new** rule:

**11—111.2(8A) Disposal of state surplus property.** The director shall dispose of all personal property of the state under the director's control when the personal property becomes unnecessary or unfit for further use by the state. This rule establishes the procedures for inspecting, selecting and removing surplus property from state agencies or from state storage.

**111.2(1) Means of disposal.** The director may dispose of unfit or unnecessary personal property by auction or other method of sale, trade-in, salvage, recycling, donation or transfer, or may properly and safely dispose of it by other means.

**111.2(2) Proceeds from disposal.** Except for proceeds from the sale of vehicles and printing equipment or except as otherwise provided by law or rule, proceeds from the sale of personal property by the director shall be deposited in the general fund of the state.

**111.2(3) Transfer.** Personal property may be transferred between state agencies in lieu of other means of disposal when the receiving agency has a business use for the personal property.

**111.2(4) Disposal agreement.** The director may enter into agreements with not-for-profit organizations or governmental agencies to dispose of state surplus. Notwithstanding subrule 111.2(3), when the director disposes of surplus property by donation, the disposal of such property shall be in accordance with an agreement established pursuant to this subrule between the department and a surplus property program agent. A surplus property disposal agreement shall contain, at a minimum, the following components:

a. Identity of parties. The agreement shall be between the department and the surplus property program agent.

b. Purpose. The purpose of the agreement shall be for the disposal of state surplus.

c. Definitions. Terms having special meaning to the agreement shall be defined.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

d. Project description. The process utilized for disposal of state surplus and the rights and responsibilities of the parties under this agreement shall be described.

e. Compensation and fees. The agreement shall specify any fees charged by the surplus property program agent for removal and transportation of the state surplus. When the surplus property program agent adds value to the property transferred to it and sells the property, the proceeds from the sale shall be retained by the surplus property program agent and shall not be deposited in the general fund of the state.

f. Geographical or commodity conditions. The agreement shall specify any geographical conditions that may apply and any restrictions on the types of commodities accepted by the surplus property program agent.

g. Title to state surplus property. The agreement shall specify the declaration form required to transfer the surplus property and shall specify that title to the surplus property shall transfer to the surplus property program agent when the surplus property and the declaration form for the surplus property are in the possession of the surplus property program agent.

h. Duration of agreement. The duration of the agreement shall be specified as not to exceed six years, with annual reviews conducted by the parties.

i. Liability and indemnification. The agreement shall specify the liability and indemnification terms, such as parties' responsibilities for damage to state buildings and leased spaces as a result of performance of the agreement.

j. Default and termination. Default and termination conditions shall be specified.

k. Contract administration. The method or procedures for contract administration shall be specified, including provisions for monitoring compliance.

l. Execution. The agreement shall be signed by the director and the surplus property program agent.

**111.2(5)** Use of additional disposal agreements. Where more than one agreement is in place in a particular county or region of the state, state agencies shall utilize the surplus property program agents on a fair and equitable basis.

**111.2(6)** Identifying items for disposal. State agency staff designated by the director or designated department staff may identify unused property within state office areas and determine whether the unused property is scrap or salvageable surplus property.

**111.2(7)** Removal of surplus property.

a. Requests from agencies to remove surplus property may be processed through the department on the capitol complex.

b. Requests from agencies to remove surplus property may be sent directly to the surplus property program agent.

c. State agencies or designated department staff may remove surplus property from a building's office area or state storage to the building's surplus property staging area.

**111.2(8)** Disposal of hazardous waste. When the director or director's designee concludes that personal property provided for disposal is contaminated, contains hazardous waste, or is hazardous waste, the state agency providing such property for disposal is responsible for the hazardous waste disposal fees.

**111.2(9)** Surplus property sale by state agencies. The director may authorize one or more individuals within a state agency to sell surplus property located outside Polk County by public auction when the director determines this is the most cost-effective method of disposal. The net proceeds from the sale shall be deposited in the general fund of the state.

**111.2(10)** Disposal of printing equipment. The director may dispose of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation pursuant to Iowa Code section 8A.341. The receipts from the sale of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation shall be deposited in the printing revolving fund established in Iowa Code section 8A.345.

**111.2(11)** Disposal of surplus office modular components, furniture and equipment. Disposal of surplus office modular components, furniture and equipment shall be carried out pursuant to 11—subrule 100.6(7).

**ARC 4126B****EDUCATIONAL EXAMINERS  
BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 16, "Career and Technical Endorsements and Licenses," Iowa Administrative Code.

The proposed amendments are recommended as the current language for implementing the family and consumer sciences endorsement.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, May 17, 2005, at 1 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, May 20, 2005. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to [barbara.hendrickson@iowa.gov](mailto:barbara.hendrickson@iowa.gov), or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 14.141(10) as follows:

**14.141(10)** ~~Home—economics~~ *Family and consumer sciences*—general. 7-12. Completion of 24 semester hours in ~~home—economics family and consumer sciences~~ to include coursework in *family-life human development, parenthood education, family studies, consumer resource management, clothing and textiles and apparel, housing, and foods and nutrition.*

ITEM 2. Rescind and reserve subrule **16.1(1)**, paragraphs “d” and “e.”

**ARC 4127B****EDUCATIONAL EXAMINERS  
BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 15, “Requirements for Special Education Endorsements,” Iowa Administrative Code.

The proposed amendments are needed to clarify the rules that are being enforced and will eliminate any conflict that may exist between the old rules and the new rules for the special education endorsements.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, May 17, 2005, at 1:30 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, May 20, 2005. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to [barbara.hendrickson@iowa.gov](mailto:barbara.hendrickson@iowa.gov), or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind and reserve subrules **15.2(1)** to **15.2(5)**.

ITEM 2. Rescind and reserve subrules **15.2(8)** to **15.2(10)**.

**ARC 4128B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Amended Notice of Intended Action**

Pursuant to the provisions of Iowa Code sections 455B.133 and 459.207, the Environmental Protection Commission hereby gives notice of extension through May 2, 2005, of the public comment period for proposed changes to the Notice of Intended Action to amend Chapter 20, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 22, “Controlling Pollution,” and Chapter 31, “Nonattainment Areas,” and to adopt a new Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Nonattainment Areas and Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The original Notice of Intended Action was published in the Iowa Administrative Bulletin on February 16, 2005, as **ARC 4005B**. The purpose of that rule making is to adopt revisions to the Nonattainment New Source Review (NSR) provisions in 40 CFR Part 51.165 and the Prevention of Significant Deterioration (PSD) provisions for attainment area NSR in 40 CFR Part 51.166 that were promulgated by the U.S. Environmental Protection Agency on December 31, 2002. Pursuant to the original Notice of Intended Action, public hearings were held on March 18, 2005, and March 23, 2005.

The U.S. Environmental Protection Agency sent a letter, dated March 23, 2005, to the Department of Natural Resources requesting that the public comment period be extended from March 25, 2005, to May 2, 2005. The Department is responding to this request and extending the public comment period to May 2, 2005. No other changes have been made to the original Notice of Intended Action.

No additional public hearings are scheduled. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515)242-5094, or by electronic mail to [christine.paulson@dnr.state.ia.us](mailto:christine.paulson@dnr.state.ia.us). All written comments must be received on or before May 2, 2005.

**ARC 4121B****LABOR SERVICES DIVISION[875]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 89A.3(1) and 89A.13(6), the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 75, “Fees,” Iowa Administrative Code.

The amendments are intended to update fees charged for enforcement of Iowa Code chapter 89A. These amendments are proposed in order to reflect economic changes since these rules were last amended and to provide adequate funding for enforcement of Iowa Code chapter 89A.

These amendments will not necessitate combined expenditures exceeding \$100,000 by all political subdivisions or agencies and entities which contract with political subdivisions to provide services.

These amendments do not contain a waiver provision because variances may be sought through the Elevator Safety Board.

If requested no later than May 17, 2005, by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having not less than 25 members, a public hearing will be held at 1:30 p.m. on May 19, 2005, in the Capitol View Conference Room, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

The public hearing will be canceled without further notice if no request for a hearing is received.

Written data, views, or arguments to be considered in adoption shall be submitted no later than May 17, 2005, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [mitchell.mahan@iwd.state.ia.us](mailto:mitchell.mahan@iwd.state.ia.us).

The Division of Labor Services will issue a regulatory analysis as provided by Iowa Code section 17A.4A if a written request is submitted no later than May 30, 2005, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons who each qualify as a small business, or an organization representing at least 25 small businesses.

These amendments are intended to implement Iowa Code chapter 89A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrules 75.1(1) and 75.1(2) as follows:

**75.1(1)** Installation inspection and permit fees for elevators, escalators, and moving walks shall be as follows: up to and including \$40,000 of valuation—\$130; over \$40,000 of valuation—\$130 plus \$1 for each \$1,000 or fraction thereof over \$40,000 of valuation ~~four landings—\$500; five or more landings—\$600.~~ *Installation inspection and permit fees for escalators and moving walks shall be \$500.* These fees include initial inspection and first-year operating permit. If the facility does not comply at the time of the acceptance inspection and has to be reinspected through no fault of the division of labor services, there shall be a reinspection fee of \$200 for each additional inspection. The installation inspection and permit fees shall be remitted to the division of labor services when the application is filed.

Consultative inspections may be performed at the discretion of the labor commissioner for a fee of \$100 per hour, including travel time, with a minimum charge of \$200.

**75.1(2)** Installation inspection and permit fees for dumbwaiters and inclined or vertical wheelchair lifts shall be as follows: ~~up to and including \$30,000 of valuation—\$90; over \$30,000 of valuation—\$90 plus \$1 for each \$1,000 or any fraction thereof over \$30,000 of valuation \$350.~~ These fees include initial inspection and first-year permit. If the facility does not comply at the time of the acceptance inspection and has to be reinspected through no fault of the division of labor services, there shall be a reinspection fee of \$200 for each additional inspection. The installation inspection and permit fees shall be remitted to the division of labor services when the application is filed.

Consultative inspections may be performed at the discretion of the labor commissioner for a fee of \$100 per hour, including travel time, with a minimum charge of \$200.

ITEM 2. Amend subrule 75.3(1) as follows:

**75.3(1)** The periodic (annual) inspection fee for elevators, escalators, moving walks, or dumbwaiters and inclined or vertical wheelchair lifts shall be as follows: for each elevator, —\$75; *for each escalator—\$60; and for each moving walk—\$50 plus \$2 for every elevator landing \$60;* for each dumbwaiter—\$35 *\$60;* for each hand-powered elevator—\$40 *\$60;* for each inclined or vertical wheelchair lift—\$40 *\$60.* This fee includes only the inspection. If the installation has to be reinspected through no fault of the division of labor services, there shall be a reinspection fee of \$200. Fees shall be remitted to the division of labor services within 30 days of the date of inspection.

Consultative inspections may be performed at the discretion of the labor commissioner for a fee of \$100 per hour, including travel time, with a minimum charge of \$200.

ITEM 3. Amend rule 875—75.4(89A) as follows:

**875—75.4(89A) Operating permits.** Annual operating permit fee shall be as follows: for each facility—\$30 *\$50.*

ITEM 4. Amend rule 875—75.7(89A) as follows:

**875—75.7(89A) Special inspector license.** The special inspector license annual fee shall be \$30 *\$60.* The fee must be paid for each renewal.

**ARC 4122B****LABOR SERVICES DIVISION[875]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 89A.3(1) and 89A.13(6), the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 76, "Permits," Iowa Administrative Code.

The amendment is intended to facilitate the alteration and inspection of elevators under Iowa Code chapter 89A. This amendment is proposed to clarify for inspectors, owners, and those responsible for alterations of elevators what changes to an elevator will result in that elevator being deemed a new facility for purposes of the standards it must meet.

This amendment will not necessitate combined expenditures exceeding \$100,000 by all political subdivisions or agencies and entities which contract with political subdivisions to provide services.

This amendment does not contain a waiver provision because variances can be sought through the Elevator Safety Board.

If requested no later than May 17, 2005, by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having not less than 25 members, a public hearing will be held at 1:30 p.m. on May 19, 2005, in the Capitol View Conference Room, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

The public hearing will be canceled without further notice if no request for a hearing is received.

Written data, views, or arguments to be considered in adoption shall be submitted no later than May 17, 2005, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [mitchell.mahan@iwd.state.ia.us](mailto:mitchell.mahan@iwd.state.ia.us).

The Division of Labor Services will issue a regulatory analysis as provided by Iowa Code section 17A.4A if a written request is submitted no later than May 30, 2005, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons who each qualify as a small business, or an organization representing at least 25 small businesses.

This amendment is intended to implement Iowa Code chapter 89A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 875—76.7(89A) as follows:

**875—76.7(89A) Alterations.** When any combination of alterations or changes is made constituting more than 50 percent of the elevator or hoistway construction as determined by the commissioner, the entire facility shall be brought into compliance with ASME A17.1 (2000 through the 2003 addenda) and shall be deemed a new facility. *Alterations or changes constitute more than 50 percent of the construction if they exceed 50 percent of the total points according to the following table:*

<b>Elevator Component</b>	<b>Hydraulic</b>	<b>Geared</b>	<b>Gearless</b>
Controller	31	26	26
Floor selector	4	8	8
Drive—MG—SCR	—	13	13
Main machine	—	15	15
Machine motor	5	8	6
Hoist ropes	4	8	8
Governor	4	7	7
Platform	9	9	9
Car fixtures	9	8	8
Cab	10	10	10
Safeties	6	7	7
Door operator	12	12	12
Hoistway door panels	11	10	10
Hoistway door frames	11	10	10
Hoistway hangers & tracks	11	11	11
Hoistway door locks	8	9	9
Traveling cable	6	9	9
Hoistway wiring	8	6	6
Hall fixtures	8	10	10
Buffers	6	6	6
Counterweight	4	7	7
Rails & brackets	10	18	18
Car & cwt. guides	6	6	6
Pump	9	—	—
Valve	9	—	—
Tank	9	—	—
Plunger	14	—	—
Cylinder	18	—	—
<b>Total Points</b>	<b>242</b>	<b>233</b>	<b>231</b>

*If any of the above elevator components do not apply, the points for the component(s) shall be subtracted from the total points before a determination of whether the alteration or change constitutes 50 percent is made.*



## ARC 4120B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy hereby gives Notice of Intended Action to amend Chapter 131, “Licensure of Massage Therapists,” Chapter 133, “Continuing Education for Massage Therapists,” and Chapter 135, “Fees,” Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments no later than May 17, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 17, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—131.1(152C)** as follows:

Amend the following definition:

“Licensure by endorsement” means the issuance of an Iowa license to practice massage therapy to an applicant who is ~~currently~~ *or has been* licensed in another state.

Rescind the definition of “lapsed license.”

Adopt the following **new** definitions in alphabetical order:

“Active license” means a license that is current and has not expired.

“Grace period” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“Reactivate” or “reactivation” means the process as outlined in rule 131.14(17A,147,272C) by which an inactive license is restored to active status.

“Reinstatement” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

ITEM 2. Rescind rule **645—131.6(152C)**, numbered paragraph “6,” and adopt in lieu thereof the following **new** numbered paragraph “6”:

6. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- Licensee’s name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

ITEM 3. Rescind subrule 131.8(1) and adopt in lieu thereof the following **new** subrule:

**131.8(1)** The biennial license renewal period for a license to practice massage therapy shall begin on the sixteenth day of the anniversary month and end on the fifteenth day of the anniversary month two years later. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Rescind subrule 131.8(3) and adopt in lieu thereof the following **new** subrule:

**131.8(3)** A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—133.2(152C) and the mandatory reporting requirements of subrule 131.8(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and
- b. Submit the completed renewal application and renewal fee before the license expiration date; and
- c. Submit evidence of current certification in CPR/first aid.

ITEM 5. Rescind subrule 131.8(5) and adopt in lieu thereof the following **new** subrule:

**131.8(5)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 6. Amend subrule 131.8(7) as follows:

**131.8(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 135.1(4). To renew a late license, the licensee shall complete the renewal requirements and

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

submit the late fee within 30 days following the expiration date on the wallet card the grace period.

ITEM 7. Adopt **new** subrule 131.8(8) as follows:

**131.8(8)** Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a massage therapist in Iowa until the license is reactivated. A licensee who practices as a massage therapist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 8. Rescind and reserve rules **645—131.9(272C)** and **645—131.10(272C)**.

ITEM 9. Rescind rule **645—131.13(17A,147,272C)** and adopt in lieu thereof the following **new** rule:

**645—131.13(17A,147,272C) License denial.**

**131.13(1)** When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

**131.13(2)** An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

**131.13(3)** If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 10. Adopt the following **new** rules:

**645—131.14(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**131.14(1)** Submit a reactivation application on a form provided by the board.

**131.14(2)** Pay the reactivation fee that is due as specified in 645—Chapter 135.

**131.14(3)** Provide verification of current competence to practice as a massage therapist by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 12 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 12 hours of continuing education within two years of application for reactivation; and

(3) Verification of passing one of the following examinations offered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB):

1. The National Certification Examination for Therapeutic Massage (NCETM); or
2. The National Certification Examination for Therapeutic Massage and Bodywork (NCETMB); or
3. The National Examination for States Licensing (NELS) option.

**645—131.15(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 131.14(17A,147,272C) prior to practicing as a massage therapist in this state.

ITEM 11. Amend rule **645—133.1(152C)** as follows:

Rescind the definitions of "administrator," "approved sponsor," and "lapsed license."

Adopt the following **new** definition in alphabetical order: "Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

Amend the following definitions:

"Active license" means the license of a person who is acting, functioning, and working in compliance with license requirements a license that is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Hour of continuing education" means a clock hour at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means the license of a person who is not engaged in practice in the state of Iowa a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

ITEM 12. Amend subrules 133.2(3) and 133.2(4) as follows:

**133.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that implement them in accordance with these rules.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**133.2(4)** No hours of continuing education shall be carried over into the next biennium. *A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.*

ITEM 13. Rescind rule 645—133.4(152C) and adopt the following **new** rule in lieu thereof:

**645—133.4(152C,272C) Audit of continuing education report.** After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

**133.4(1)** The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

**133.4(2)** The licensee shall provide the following information to the board for auditing purposes:

- a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;
- b. Number of contact hours for program attended; and
- c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

**133.4(3)** For auditing purposes, all licensees must retain the information identified in subrule 133.4(2) for two years after the biennium has ended.

**133.4(4)** Information identified in subrule 133.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

**133.4(5)** If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

**133.4(6)** Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 14. Rescind rule 645—133.5(152C) and adopt the following **new** rule in lieu thereof:

**645—133.5(152C,272C) Automatic exemption.** A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 15. Rescind rule 645—133.6(152C) and adopt the following **new** rule in lieu thereof:

**645—133.6(152C,272C) Continuing education exemption for disability or illness.** A licensee who has had a physi-

cal or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver to a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

**133.6(1)** The board may grant an extension of time to fulfill the continuing education requirement.

**133.6(2)** The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

**133.6(3)** The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

ITEM 16. Rescind rule 645—133.7(152C,272C) and adopt the following **new** rule in lieu thereof:

**645—133.7(152C,272C) Grounds for disciplinary action.** The board may take formal disciplinary action on the following grounds:

**133.7(1)** Failure to cooperate with a board audit.

**133.7(2)** Failure to meet the continuing education requirement for licensure.

**133.7(3)** Falsification of information on the license renewal form.

**133.7(4)** Falsification of continuing education information.

ITEM 17. Rescind and reserve rules **645—133.8(152C,272C)**, **645—133.9(152C,272C)**, **645—133.10(152C,272C)** and **645—133.11(272C)**.

ITEM 18. Amend subrules 135.1(5) and 135.1(6) as follows:

**135.1(5)** ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee is \$100.*

**135.1(6)** Duplicate or reissued license certificate *or wallet card* fee is \$10.

ITEM 19. Rescind and reserve subrule **135.1(7)**.

## ARC 4119B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy hereby gives Notice of Intended Action to amend Chapter 131, "Licensure of Massage Therapists," Chapter 133, "Continuing Education for Massage Therapists," and Chapter 134, "Discipline for Massage Therapists," Iowa Administrative Code.

These amendments propose new subrule 134.2(31), which provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee; redefine the examination requirements; allow for a student-submitted transcript when a school has closed; rescind continuing education criteria and adopt new continuing education criteria; and address changes in the criteria for a temporary license.

Any interested person may make written comments on the proposed amendments no later than May 17, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 17, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 131.2(4) as follows:

**131.2(4)** The applicant shall have official copies of academic transcripts sent directly from the board-approved school to the board of examiners for massage therapy. *If a school has closed and is no longer operational, the board will accept an official transcript provided by the student.*

ITEM 2. Amend subrule 131.2(6), introductory paragraph, as follows:

**131.2(6)** The applicant shall submit proof of completion of a cardiopulmonary resuscitation (CPR) course and a first-aid course that were certified by the American Red Cross or, by the American Heart Association, or by the National Safety Council. One of the following shall be required:

ITEM 3. Amend subrule 131.2(7) as follows:

**131.2(7)** The applicant shall provide proof of passing the National Certification Examination for Therapeutic Massage and Bodywork administered by the testing service contracting with the any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination. Proof of passing shall be sent directly from the testing service to the board of examiners for massage therapy. The passing score on the written examination shall be the passing point criterion established by the national testing authority at the time the test was administered.

ITEM 4. Amend the introductory paragraph of rule 645—131.4(152C) as follows:

**645—131.4(152C) Examination requirements.** The examination required by the board shall be the National Certification Examination for Therapeutic Massage and Bodywork examination required pursuant to subrule 131.2(7).

ITEM 5. Rescind rule 645—131.5(152C) and adopt the following **new** rule in lieu thereof:

**645—131.5(152C) Temporary licensure of a licensee from another state.**

**131.5(1)** A temporary license may be issued to an applicant who holds a current license from another state with lower licensure requirements than those in Iowa. The applicant shall:

- a. Submit to the board a completed application;
- b. Pay the licensure fee;
- c. Provide proof of completion of a cardiopulmonary resuscitation (CPR) course and a first-aid course that were certified by the American Red Cross, the American Heart Association, or the National Safety Council. One of the following shall be required:

(1) An official transcript documenting completion of a CPR class and a first-aid class within one year prior to submitting the application for licensure; or

(2) A copy of the current certification card(s) or renewal card(s);

d. Provide proof of passing any NCBTMB examination, to be sent directly from the NCBTMB to the board office, if applicable;

e. Provide official verification of license(s) from every state in which the applicant has been licensed, to be sent directly from the state(s) to the board office;

f. Submit a plan for meeting the board's requirements for licensure within one year of the issuance of the temporary permit. Such plan shall include proof of enrollment in a school of massage therapy whose curriculum has been approved by the board, the date of enrollment, and the expected date of graduation.

**131.5(2)** A temporary license shall be valid for a period of up to one year and shall not be renewed.

**131.5(3)** The applicant shall be issued a permanent license upon receipt of a transcript of completion from a board-approved school sent directly from the school, and proof of passing any NCBTMB examination sent directly from the NCBTMB to the board office.

**131.5(4)** There is no additional fee for converting a temporary license to a permanent license.

ITEM 6. Amend subrules 133.2(1) and 133.2(2) as follows:

**133.2(1)** The biennial continuing education compliance period shall be run concurrently with each renewal period. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 12 hours of continuing education approved by the board.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*Beginning August 1, 2006, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 24 hours of continuing education per biennium.*

**133.2(2)** Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 12 hours of continuing education per biennium for each subsequent license renewal. *Beginning August 1, 2006, each new licensee shall be required to complete a minimum of 24 hours of continuing education per biennium for each subsequent license renewal.*

ITEM 7. Amend rule 645—133.3(152C), catchwords, as follows:

**645—133.3(152C) Standards for approval.**

ITEM 8. Amend subrule 133.3(1), introductory paragraph and paragraph “c,” as follows:

**133.3(1)** General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

c. *Is sponsored by a local, state, national or international professional organization or chapter of massage/bodywork therapy, or a professional hands-on school of massage/bodywork therapy that meets or exceeds the standards set forth in 645—Chapter 132. The presenter must be a massage/bodywork therapist with a minimum of five years of clinical experience in massage/bodywork therapy. Is conducted by individuals who Individuals conducting the continuing education activity must have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The At the time of audit, the board may request the qualifications of presenters;*

ITEM 9. Amend subrule **133.3(1)**, paragraph “e,” subparagraphs (2) and (3), as follows:

(2) Number of program contact hours (~~One contact hour equals one hour of continuing education credit~~); and

(3) ~~Official signature or verification by program sponsor~~ Certificate of completion or evidence of successful completion of the course from the course sponsor.

ITEM 10. Amend subrule 133.3(2), introductory paragraph, as follows:

**133.3(2)** Specific criteria. *This subrule shall be effective through July 31, 2006. On and after August 1, 2006, subrule 133.3(3) shall be effective.*

ITEM 11. Adopt the following **new** subrule:

**133.3(3)** Specific criteria. This subrule shall be effective on and after August 1, 2006.

a. A licensee shall obtain a minimum of 24 hours of continuing education credit per biennium, of which at least 12 hours shall be obtained by attending programs which pertain to massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including, but not limited to, myofascial release, craniosacral, neuromuscular therapy, stretching techniques, hands-on hydrotherapy techniques, structural integration, medical massage techniques, chair massage, infant massage, prenatal massage, sports mas-

sage, shiatsu, acupressure, tui na, and manual lymphatic drainage.

b. Content areas that are acceptable for continuing education credit include:

(1) Programs listed but not limited to massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, contraindications, pathology, HIV/AIDS education, Eastern techniques, zero balancing, reflexology, somatic education, anatomy and physiology, kinesiology and pathology. Also included is therapy which involves manipulation of the muscle and connective tissue of the body to treat the muscle tonus system for the purpose of enhancing health, providing muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

(2) Courses on aromatherapy, herbalism, herbology, homeopathy and other similar areas.

(3) Courses on hellerwork, ortho-bionomy, polarity therapy, touch for health, visceral manipulation, and other similar areas.

(4) Programs of learning which contribute directly to the professional competency of the licensee.

(5) Programs of learning which pertain to subject matters integrally related to the practice of the profession, including but not limited to government regulation, practice management specific to massage therapy, professional ethics, and other similar areas.

(6) Programs of learning which pertain to disciplines or modalities adjunct to massage delivery.

(7) Programs of learning necessary to meet mandatory reporter training requirements and CPR/first-aid recertification. Only the number of hours obtained during the biennium renewal period may be utilized toward meeting the continuing education requirement; no hours shall be carried over into the next biennium.

c. Excluded content areas for continuing education include but are not limited to meditation, feng shui, communication, insurance, personal development, nutrition, yoga, collective bargaining, and community service.

d. The maximum number of hours in each category in each biennium is as follows:

(1) A licensee may receive credit on a one-time basis not to exceed two hours of continuing education credit per biennium for delivery of course(s) in a massage school setting, if the following criteria are met:

1. The course(s) is part of a curriculum approved by the board as outlined in 645—132.3(152C);

2. The licensee is qualified to teach the course(s) as outlined in 645—132.3(152C);

3. The school provides an official written statement which verifies the following:

- Course title and number of course hours;
- Inclusive dates the course was taught by the licensee;
- Teaching qualifications of the licensee.

(2) Six hours of credit per biennium may be granted for anatomy and physiology.

(3) Six hours of credit per biennium may be granted for pathology.

(4) Six hours of credit per biennium may be granted for kinesiology.

ITEM 12. Adopt the following **new** subrule:

**134.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

## ARC 4118B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 141, “Licensure of Nursing Home Administrators,” Chapter 143, “Continuing Education for Nursing Home Administration,” and Chapter 145, “Fees,” Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments on or before May 17, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 17, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 155 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—141.1(155)** as follows:

Amend the following definition:

“Licensure by endorsement” means the issuance of an Iowa license to practice nursing home administration to an applicant who is ~~currently or has been~~ licensed in another state.

Rescind the definition of “lapsed license.”

Adopt the following **new** definitions in alphabetical order: “Active license” means a license that is current and has not expired.

“Grace period” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“Reactivate” or “reactivation” means the process as outlined in rule 141.13(17A,147,272C) by which an inactive license is restored to active status.

“Reinstatement” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

ITEM 2. Amend subrule 141.4(1) as follows:

Amend the introductory paragraph and paragraph “a” as follows:

**141.4(1)** Applicants with degrees in health care administration, health services administration, *health care management, health services management*, nursing home administration or long-term care administration. An applicant for licensure to practice as a nursing home administrator shall possess a baccalaureate or postbaccalaureate degree in ~~health care administration, health services administration, nursing home administration or long-term care administration~~ *a qualifying degree program* from a college or university currently accredited by one of the following: a regional accrediting agency, an organization affiliated with the National Commission on Accrediting (Council of Post-secondary Accreditation), or the National Association of Boards of Examiners of Long Term Care Administrators. The practicum requirements are as follows:

a. The applicant shall complete ~~42-semester 720 clock~~ hours of long-term health care practicum (~~720 clock hours~~). There are nine areas of practicum requiring 80 clock hours each: social services; dietary; legal aspects and government organizations; nursing; environmental services; activities/community resources; business administration; administrative organization; and human resource management; or

Rescind and reserve paragraph “b.”

ITEM 3. Amend subrule **141.4(2)**, paragraph “d,” as follows:

Amend subparagraph (1) as follows:

(1) The applicant shall complete ~~42-semester 720 clock~~ hours of long-term health care practicum (~~720 clock hours~~). There are nine areas of practicum requiring 80 clock hours each: social services; dietary; legal aspects and government organizations; nursing; environmental services; activities/community resources; business administration; administrative organization; and human resource management; or

Rescind and reserve subparagraph (2).

ITEM 4. Rescind rule **645—141.7(155)**, numbered paragraph “5,” and adopt in lieu thereof the following **new** numbered paragraph “5”:

5. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- Licensee’s name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license; and

ITEM 5. Rescind rule 645—141.9(155) and adopt in lieu thereof the following **new** rule:

**645—141.9(155) License renewal.**

**141.9(1)** The biennial license renewal period for a license to practice nursing home administration shall begin on January 1 of each even-numbered year and end on December 31

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

of the next odd-numbered year. All licensees shall renew on a biennial basis. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

**141.9(2)** An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

**141.9(3)** A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—143.2(272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

**141.9(4)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

**141.9(5)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 145.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

**141.9(6)** Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a nursing home administrator in Iowa until the license is reactivated. A licensee who practices as a nursing home administrator in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

**141.9(7)** Persons licensed to practice as nursing home administrators shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

ITEM 6. Rescind and reserve rules **645—141.10(272C)** and **645—141.11(272C)**.

ITEM 7. Rescind rule 645—141.14(272C) and adopt in lieu thereof the following **new** rule:

**645—141.14(272C) License denial.**

**141.14(1)** When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

**141.14(2)** An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

**141.14(3)** If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 8. Adopt the following **new** rules:

**645—141.15(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**141.15(1)** Submit a reactivation application on a form provided by the board.

**141.15(2)** Pay the reactivation fee that is due as specified in 645—Chapter 145.

**141.15(3)** Provide verification of current competence to practice as a nursing home administrator by satisfying the following criteria:

a. Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license; and

b. Verification of completion of 40 hours of continuing education within two years of the application for reactivation.

**645—141.16(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 141.15(17A,147,272C) prior to practicing as a nursing home administrator in this state.

ITEM 9. Amend rule **645—143.1(272C)** as follows:

Amend the following definitions:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements *is current and has not expired*.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, ~~which has received advance approval by the board pursuant to these rules.~~

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period ~~or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.~~

"Hour of continuing education" means ~~a clock hour at least 50 minutes~~ spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means ~~the license of a person who is not in practice in the state of Iowa a license that has expired because it was not renewed by the end of the grace period.~~ The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

Rescind the definitions of "administrator," "approved sponsor," and "lapsed license."

Adopt the following **new** definition in alphabetical order:

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“Independent study” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

ITEM 10. Amend subrules 143.2(3) and 143.2(4) as follows:

**143.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them in accordance with these rules.

**143.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. *A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.*

ITEM 11. Amend rule 645—143.3(272C), catchwords, as follows:

**645—143.3(272C) Standards for approval.**

ITEM 12. Amend subrule 143.3(1), introductory paragraph and paragraph “c,” as follows:

**143.3(1)** General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. ~~The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The~~ *At the time of audit, the board may request the qualifications of presenters;*

ITEM 13. Amend subrule **143.3(1)**, paragraph “e,” subparagraphs (2) and (3), as follows:

(2) Number of program contact hours ~~(One contact hour usually equals one hour of continuing education credit.); and~~

(3) ~~Official signature or verification by program sponsor~~ *Certificate of completion or evidence of successful completion of the course provided by the course sponsor.*

ITEM 14. Rescind rule 645—143.4(272C) and adopt the following **new** rule in lieu thereof:

**645—143.4(155,272C) Audit of continuing education report.** After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

**143.4(1)** The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

**143.4(2)** The licensee shall provide the following information to the board for auditing purposes:

a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;

b. Number of contact hours for program attended; and

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

**143.4(3)** For auditing purposes, all licensees must retain the information identified in subrule 143.4(2) for two years after the biennium has ended.

**143.4(4)** Information identified in subrule 143.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

**143.4(5)** If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

**143.4(6)** Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 15. Rescind rule 645—143.5(272C) and adopt the following **new** rule in lieu thereof:

**645—143.5(155,272C) Automatic exemption.** A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or

2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or

3. Was a government employee working in the licensee’s specialty and assigned to duty outside the United States; or

4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 16. Rescind rule 645—143.6(272C) and adopt the following **new** rule in lieu thereof:

**645—143.6(272C) Continuing education exemption for disability or illness.** A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee’s status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

**143.6(1)** The board may grant an extension of time to fulfill the continuing education requirement.

**143.6(2)** The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

**143.6(3)** The board may, as a condition of any extension or exemption granted, require the licensee to make up a por-



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tion of the continuing education requirement in the manner determined by the board.

ITEM 17. Rescind rule 645—143.7(272C) and adopt the following **new** rule in lieu thereof:

**645—143.7(155,272C) Grounds for disciplinary action.** The board may take formal disciplinary action on the following grounds:

**143.7(1)** Failure to cooperate with a board audit.

**143.7(2)** Failure to meet the continuing education requirement for licensure.

**143.7(3)** Falsification of information on the license renewal form.

**143.7(4)** Falsification of continuing education information.

ITEM 18. Rescind and reserve rules **645—143.8(272C)**, **645—143.9(272C)**, **645—143.10(272C)** and **645—143.11(272C)**.

ITEM 19. Amend subrules 145.1(4) and 145.1(5) as follows:

**145.1(4)** ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee is \$100.*

**145.1(5)** Duplicate or reissued license certificate *or wallet card* fee is \$10.

ITEM 20. Rescind and reserve subrule **145.1(6)**.

## ARC 4117B

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 141, “Licensure of Nursing Home Administrators,” and Chapter 144, “Discipline for Nursing Home Administrators,” Iowa Administrative Code.

These proposed amendments add new subrule 144.2(33) to provide the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee, remove the licensure fee method of payment options, and modify rules to be consistent with 2004 legislative changes by adjusting requirements relating to administrator experience and practicum requirements.

Any interested person may make written comments on the proposed amendments no later than May 17, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 17, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record

and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 155 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—141.2(155)**, numbered paragraph “3,” as follows:

3. Each application shall be accompanied by the appropriate fees payable ~~by check or money order~~ to the Board of Examiners for Nursing Home Administrators. The fees are nonrefundable;

ITEM 2. Rescind subrule **141.4(1)**, paragraph “d,” and adopt in lieu thereof **new** paragraph “d” as follows:

d. Substitution of one year of long-term health care administration experience may be allowed at the discretion of the board. An applicant must submit to the board the following:

(1) Written verification provided directly from the facility owner, chief operating officer, human resources officer, or board president that states the dates of service, facility name(s), and position(s) held; and

(2) A written attestation provided directly from a licensed nursing home administrator to verify the completion of the equivalent of a minimum of 80 clock hours in each of the nine areas of practicum as specified in 141.4(1)“a.”

ITEM 3. Rescind subrule **141.4(2)**, paragraph “d,” subparagraph (4), and adopt in lieu thereof **new** subparagraph (4) as follows:

(4) Substitution of one year of long-term health care administration experience may be allowed at the discretion of the board. An applicant must submit to the board the following:

1. Written verification provided directly from the facility owner, chief operating officer, human resources officer, or board president that states the dates of service, facility name(s), and position(s) held; and

2. A written attestation provided directly from a licensed nursing home administrator to verify the completion of the equivalent of a minimum of 80 clock hours in each of the nine areas of practicum as specified in 141.4(1)“a.”

ITEM 4. Rescind and reserve paragraph **141.5(1)“c.”**

ITEM 5. Amend subrule **141.5(1)**, paragraph “e,” as follows:

e. The preceptor (licensed administrator):

(1) Shall hold a current license in good standing as a nursing home administrator;

(2) Shall have at least two years’ experience as a licensed nursing home administrator; *and*

(3) ~~Shall be present in the facility during at least 75 percent of the student’s practicum; and~~

(4) ~~(3) Cannot be related to the student as a parent, spouse or sibling.~~

ITEM 6. Rescind and reserve subrule **141.5(2)**.

ITEM 7. Adopt **new** subrule 144.2(33) as follows:

**144.2(33)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

**ARC 4125B****PUBLIC SAFETY  
DEPARTMENT[661]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 100.35, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, “Fire Marshal,” and adopt new Chapter 205, “Fire Safety Requirements for Hospitals and Health Care Facilities,” Iowa Administrative Code.

Iowa Code section 100.1(5) assigns to the State Fire Marshal the authority to adopt fire safety rules in Iowa. Iowa Code section 100.35 enumerates various sorts of occupancies, including hospitals and licensed health care facilities, for which the State Fire Marshal is required to adopt rules. Hospitals and other licensed health care facilities in Iowa are required to comply with fire safety requirements established by the State Fire Marshal in order to obtain and maintain licensure. In addition, hospitals and licensed health care facilities are required to comply with fire safety requirements established by the federal Centers for Medicare and Medicaid Services in order to be eligible for reimbursement under the Medicare and Medicaid programs.

The federal fire safety regulations were updated in 2003, and the fire safety requirements for facilities providing services subject to reimbursement from Medicare or Medicaid are based on compliance with provisions from the 2000 edition of the Life Safety Code published by the National Fire Protection Association applicable to the particular type of facility. Rules of the State Fire Marshal pertaining to fire safety requirements for hospitals and other licensed health care facilities in Iowa were amended in 2003 to mirror the federal requirements. To facilitate hospitals’ and other health care facilities’ in Iowa meeting fire safety requirements for licensure by the State of Iowa while also maintaining eligibility for reimbursement from the federal Medicaid and Medicare programs, consistency between life safety requirements of the Centers for Medicare and Medicaid Services and rules of the State Fire Marshal is essential.

The Centers for Medicare and Medicaid Services recently (March 25, 2005) published a notice announcing an Interim Final Rule and Comment Period. The announced rule making will amend life safety requirements for certification for eligibility for reimbursement from the Medicaid and Medicare programs. Generally, the amendments reduce restrictions on the use and placement of dispensers for alcohol-based hand rub. This change will take effect on May 24, 2005. A second item applies only to long-term care facilities. As of May 24, 2006, these facilities will be required to have a battery-operated smoke detector in each resident sleeping room and public area, unless the facility (1) has a system of hard-wired smoke detectors with a detector in each resident sleeping room and public area, or (2) has an approved sprinkler system which provides coverage throughout the facility.

In addition to these substantive changes, the amendments proposed herein would include moving all of the rules of the State Fire Marshal concerning fire safety in hospitals and other licensed health care facilities to a new Chapter 205.

This is part of an ongoing effort to renumber rules of the Department of Public Safety to make them more understandable and accessible to representatives of persons and facilities regulated by the rules and to the general public.

A public hearing on these proposed amendments will be held on May 19, 2005, at 10 a.m. in the conference room at the Fire Marshal Division, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on May 19, 2005, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department by 4:30 p.m. on May 19, 2005.

In order to maintain consistency between rules of the State Fire Marshal concerning fire safety in hospitals and other licensed health care facilities, the Department plans to adopt these amendments through emergency rule-making procedures in order to make them effective on May 24, 2005. Iowa Code section 100.35 requires that the Fire Marshal adopt rules only after a public hearing. For that reason, the emergency adoption of these amendments will not take place until after the public hearing scheduled for May 19, 2005.

These amendments are intended to implement Iowa Code section 100.35 and chapters 135B, 135C, 135J and 231C and 42 CFR Parts 403, 416, 418, 482 and 483.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/LAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **661—5.900(100)** to **661—5.925(100)**.

ITEM 2. Adopt the following **new** chapter:

**CHAPTER 205****FIRE SAFETY REQUIREMENTS FOR HOSPITALS  
AND HEALTH CARE FACILITIES**

**661—205.1(100) Definitions.** The following definitions apply to rules 661—205.1(100) through 661—205.25(100).

“Ambulatory health care facility” means a facility or portion thereof used to provide services or treatment that provides, on an outpatient basis, treatment for one or more patients that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others; or provides, on an outpatient basis, anesthesia that renders the patient incapable of taking action for self-preservation under emergency conditions without the assistance of others.

“Existing” means that a facility (1) has been in continuous operation under its current classification of occupancy since before September 11, 2003, and has not undergone renovation or remodeling, including an addition, on or after September 11, 2003, or (2) received plan approval for initial construction or for its most recent renovation or remodeling

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project, including an addition, if any, from the building code bureau of the fire marshal division prior to March 11, 2003.

"Hospice" means a facility licensed or seeking licensure pursuant to Iowa Code section 135J.2.

"Hospital" means a facility licensed or seeking licensure pursuant to Iowa Code chapter 135B.

"Intermediate care facility for the mentally retarded" means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.2(3)"c."

"New" means that a facility (1) commenced continuous operation under its current classification of occupancy on or after September 11, 2003, (2) has undergone renovation or remodeling, including an addition, on or after September 11, 2003, or (3) received plan approval from the building code bureau of the fire marshal division for the initial construction of the facility or the most recent renovation of or addition to the facility on or after March 11, 2003.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

"Nursing facility" means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.6, including a nursing facility for intermediate care or a nursing facility for skilled care.

**661—205.2 to 205.4** Reserved.

**661—205.5(100) Hospitals.**

**205.5(1)** New hospitals. NFPA 101, Life Safety Code, 2000 edition, Chapter 18, is adopted by reference as the fire safety rules for new hospitals.

**205.5(2)** Existing hospitals. NFPA 101, Life Safety Code, 2000 edition, Chapter 19, is adopted by reference as the fire safety rules for existing hospitals, with the following amendments:

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

Section 19.2.9 is not effective prior to March 13, 2006.

**205.5(3)** Alcohol-based hand rub dispensers. Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a hospital may install alcohol-based hand rub dispensers in its facility if:

a. Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;

b. The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

c. The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

d. The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.

**661—205.6 to 205.9** Reserved.

**661—205.10(100) Nursing facilities and hospices.**

**205.10(1)** New nursing facilities and hospices. NFPA 101, Life Safety Code, 2000 edition, Chapter 18, is adopted by reference as the fire safety rules for new nursing facilities and hospices that provide inpatient care directly.

**205.10(2)** Existing nursing facilities and hospices. NFPA 101, Life Safety Code, 2000 edition, Chapter 19, is adopted by reference as the fire safety rules for existing nursing facilities and hospices that provide inpatient care directly, with the following amendments:

ties and hospices that provide inpatient care directly, with the following amendments:

Section 19.2.9 is not effective prior to March 13, 2006.

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

**205.10(3)** Alcohol-based hand rub dispensers. Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a hospice or nursing facility may place alcohol-based hand rub dispensers in its facility if:

a. Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;

b. The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

c. The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

d. The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.

**205.10(4)** Smoke detectors in nursing facilities. A nursing facility shall:

a. Install battery-operated smoke detectors in resident sleeping rooms and public areas by May 24, 2006.

b. Have a program for testing, maintenance, and battery replacement to ensure the reliability of the smoke detectors.

Exception: Battery-operated smoke detectors are not required in each resident sleeping room and public area if either the facility has a hard-wired AC smoke detection system in patient rooms and public areas that is installed, tested, and maintained in accordance with NFPA 72, National Fire Alarm Code, for hard-wired AC systems, or the facility has a sprinkler system throughout that is installed, tested, and maintained in accordance with NFPA 13, Automatic Sprinklers.

**661—205.11 to 205.14** Reserved.

**661—205.15(100) Intermediate care facilities for the mentally retarded and intermediate care facilities for persons with mental illness.**

**205.15(1)** New intermediate care facilities. New intermediate care facilities for the mentally retarded and new intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, 2000 edition, Chapter 18.

b. NFPA 101, Life Safety Code, 2000 edition, Chapter 32, with the following amendments:

NOTE: Any requirement contained within Chapter 32 that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical." Any provision which is dependent upon an evacuation capability rating other than "impractical" shall be unavailable.

(1) Delete Section 32.2.1.2.1 and insert in lieu thereof the following new section:

32.2.1.2.1

Small facilities shall comply with the requirements of Section 32.2 as indicated for an evacuation capability of impractical.

Exception\*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

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(2) Delete Section 32.2.1.2.2 and insert in lieu thereof the following new section:

## 32.2.1.2.2

The evacuation capability shall be classified as impractical.

(3) Delete Exception No. 1 to Section 32.2.2.1.

(4) Delete Exceptions No. 2 and No. 3 to Section 32.2.2.4.

(5) Delete the Exception to Section 32.2.3.3.2.

(6) Delete Exception No. 1 to Section 32.2.3.5.1.

(7) Delete Exceptions No. 1, No. 3 and No. 4 to Section 32.2.3.5.2.

(8) Delete Exception No. 2 to Section 32.2.3.5.2 and insert in lieu thereof the following new Exception No. 2:

Exception No. 2: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Facilities with more than eight residents shall be treated as two-family dwellings with regard to water supply.

(9) Delete Exception No. 5 to Section 32.2.3.5.2 and insert in lieu thereof the following new Exception No. 5:

Exception No. 5: In facilities up to and including four stories in height, systems in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered.

(10) Delete Section 32.2.3.5.3.

(11) Delete Section 32.2.3.5.4 and insert in lieu thereof the following new section:

## 32.2.3.5.4

Automatic sprinkler systems shall be supervised in accordance with Section 9.7.

(12) Delete Exception No. 1 to Section 32.2.3.6.1.

(13) Delete Section 32.3.1.2.1.

(14) Delete Section 32.3.1.2.2 and insert in lieu thereof the following new section:

## 32.3.1.2.2

Large facilities shall meet the requirements for limited care facilities in Chapter 18.

Exception\*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(15) Delete Section 32.3.1.2.3.

(16) Delete the Exception to Section 32.3.1.3.3, paragraph (a).

(17) Delete Section 32.4.1.4 and insert in lieu thereof the following new section:

## 32.4.1.4 Minimum Construction Requirements.

In addition to the requirements of Chapter 30, apartment buildings housing residential board and care facilities shall meet the construction requirements of 18.1.6. In applying the construction requirements, the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.

Exception: If the new board and care occupancy is created in an existing apartment building, the construction requirements of 19.1.6 shall apply.

(18) Delete Exception No. 2 to Section 32.7.3 and insert in lieu thereof the following new Exception No. 2:

Exception No. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 18.7 shall apply in such instances.

**205.15(2)** Existing intermediate care facilities. Existing intermediate care facilities for the mentally retarded and existing intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

b. NFPA 101, Life Safety Code, 2000 edition, Chapter 33, with the following amendments:

NOTE: Any requirement contained in Chapter 33 that is determined on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical." Any provision which depends upon an evacuation rating of "prompt" or "slow" shall be unavailable.

(1) Delete Section 33.1.7.

(2) Delete Section 33.2.1.2.1 and insert in lieu thereof the following new section:

## 33.2.1.2.1

Small facilities shall comply with the requirements of Section 33.2.

Exception\*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(3) Delete Section 33.2.1.2.2 and insert in lieu thereof the following new section:

## 33.2.1.2.2

The evacuation capability shall be classified as impractical.

(4) Delete Section 33.2.1.3 and insert in lieu thereof the following new section:

## 33.2.1.3 Minimum Construction Requirements.

Buildings shall be of any construction type in accordance with 8.2.1 other than Type II(000), Type III(200), or Type V(000) construction.

Exception: Buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5 shall be permitted to be of any type of construction.

(5) Delete Exception No. 1 to Section 33.2.2.1.

(6) Delete Section 33.2.2.2.2 and insert in lieu thereof the following new section:

## 33.2.2.2.2

The primary means of escape for each sleeping room shall not be exposed to living areas and kitchens.

Exception: Buildings equipped with quick-response or residential sprinklers throughout. Standard response sprinklers shall be permitted for use in hazardous areas in accordance with 33.2.3.2.

(7) Delete Exception No. 2, Exception No. 3, and Exception No. 4 to Section 33.2.2.4.

(8) Delete the Exception to Section 33.2.3.3.

(9) Delete Section 33.2.3.5.2 and insert in lieu thereof the following new section:

## 33.2.3.5.2\*

Where an automatic sprinkler system is installed, for either total or partial building coverage, the system shall be in accordance with Section 9.7 and shall activate the fire alarm system in accordance with 33.2.3.4.1. The adequacy of the water supply shall be documented to the authority having jurisdiction.

Exception No. 1: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft<sup>2</sup> (5.1 m<sup>2</sup>), provided that such

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spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.

Exception No. 2: In facilities up to and including four stories in height, systems installed in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft<sup>2</sup> (5.1 m<sup>2</sup>), provided that such spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.

Exception No. 3: Initiation of the fire alarm system shall not be required for existing installations in accordance with 33.2.3.5.5.

(10) Delete Section 33.2.3.5.3 and insert in lieu thereof the following new section:

33.2.3.5.3

All facilities shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5.2.

(11) Delete Exception No. 1 and Exception No. 4 to Section 33.2.3.6.1.

(12) Delete Section 33.3.1.1 and insert in lieu thereof the following new section:

33.3.1.1 Scope.

Section 33.3 applies to residential board and care occupancies providing sleeping accommodations for more than 16 residents. Facilities having sleeping accommodations for not more than 16 residents shall be evaluated in accordance with Section 33.2.

(13) Delete Section 33.3.1.2 and insert in lieu thereof the following new section:

33.3.1.2 Requirements.

Large facilities shall meet the requirements for limited care facilities in Chapter 19.

Exception\*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(14) Delete the Exception to Section 33.3.1.3.3, paragraph (a).

(15) Delete Exception No. 2 to Section 33.3.3.6.1.

(16) Delete Exception No. 2 to Section 33.3.3.6.3.

(17) Delete Section 33.4.1.3 and insert in lieu thereof the following new section:

33.4.1.3 Requirements.

33.4.1.3.1

Apartment buildings housing board and care facilities shall comply with the requirements of Section 33.4.

Exception\*: Facilities where the authority having jurisdiction has determined that equivalent safety for housing a residential board and care facility is provided in accordance with Section 1.5.

33.4.1.3.2

All facilities shall meet the requirements of Chapter 31 and the additional requirements of Section 33.4.

(18) Delete Section 33.4.1.4 and insert in lieu thereof the following new section:

33.4.1.4 Minimum Construction Requirements.

In addition to the requirements of Chapter 31, apartment buildings housing residential board and care facilities shall meet the construction requirements of 19.1.6. In applying the construction requirements, the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.

(19) Delete Exception No. 2 to Section 33.7.3 and insert in lieu thereof the following new exception:

Exception No. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 19.7 shall apply in such instances.

**205.15(3)** Alcohol-based hand rub dispensers. Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a facility may install alcohol-based hand rub dispensers if:

a. Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;

b. The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

c. The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

d. The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.

**661—205.16 to 205.19** Reserved.

**661—205.20(100) Ambulatory health care facilities.**

**205.20(1)** New ambulatory health care facilities. NFPA 101, Life Safety Code, 2000 edition, Chapter 20, is adopted by reference as the fire safety rules for new ambulatory health care facilities.

**205.20(2)** Existing ambulatory health care facilities. NFPA 101, Life Safety Code, 2000 edition, Chapter 21, is adopted by reference as the fire safety rules for existing ambulatory health care facilities, with the following amendments:

Section 21.2.9.1 is not effective prior to March 13, 2006.

**205.20(3)** Alcohol-based hand rub dispensers. Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, an ambulatory health care facility may place alcohol-based hand rub dispensers in its facility if:

a. Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;

b. The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

c. The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

d. The dispensers are installed in accordance with the following provisions:

(1) Where dispensers are installed in a corridor, the corridor shall have a minimum width of 6 ft (1.8 m);

(2) The maximum individual dispenser fluid capacity shall be:

1. 0.3 gallons (1.2 liters) for dispensers in rooms, corridors, and areas open to corridors;

2. 0.5 gallons (2.0 liters) for dispensers in suites of rooms;

(3) The dispensers shall have a minimum horizontal spacing of 4 ft (1.2 m) from each other;

(4) Not more than an aggregate 10 gallons (37.8 liters) of alcohol-based hand rub solution shall be in use in a single smoke compartment outside of a storage cabinet;

(5) Storage of quantities greater than 5 gallons (18.9 liters) in a single smoke compartment shall meet the require-

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

ments of NFPA 30, Flammable and Combustible Liquids Code;

(6) The dispensers shall not be installed over or directly adjacent to an ignition source; and

(7) In locations with carpeted floor coverings, dispensers installed directly over carpeted surfaces shall be permitted only in sprinklered smoke compartments.

**661—205.21 to 205.24** Reserved.

**661—205.25(100) Religious nonmedical health care institutions.**

**205.25(1)** New religious nonmedical health care institutions. NFPA 101, Life Safety Code, 2000 edition, Chapter 18, is adopted by reference as the fire safety rules for new religious nonmedical health care institutions.

**205.25(2)** Existing religious nonmedical health care institutions. NFPA 101, Life Safety Code, 2000 edition, Chapter 19, is adopted by reference as the fire safety rules for existing religious nonmedical health care institutions, with the following amendments:

Section 19.2.9 is not effective prior to March 13, 2006.

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

**205.25(3)** Alcohol-based hand rub dispensers. Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a religious nonmedical health care institution may place alcohol-based hand rub dispensers in its facility if:

a. Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;

b. The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

c. The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

d. The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.

These rules are intended to implement Iowa Code section 100.35 and chapters 135B, 135C, 135J and 231C and 42 CFR Parts 403, 416, 418, 482 and 483.

## ARC 4129B

### REVENUE DEPARTMENT[701]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 423.42(1), the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 231, “Exemptions Primarily of Benefit to Consumers,” and to adopt new Chapter 240, “Rules Necessary to Implement the Streamlined Sales and Use Tax Agreement,” Iowa Administrative Code.

The proposed amendments and new chapter are necessary to bring Iowa into compliance with the Streamlined Sales and Use Tax Agreement to the extent that Iowa’s petition for admission into membership as a party to the Agreement will be favorably acted upon and Iowa can then join the Agreement’s Governing Board.

Item 1 amends rule 701—231.14(423) to add a provision for handling “load and leave” related to the delivery of media.

Item 2 amends rule 701—231.15(423), the sales tax holiday rule, to add a definition of eligible property and to handle situations involving order dates and back orders, layaway sales, returns and different time zones.

Item 3 adds new Chapter 240, which contains the rules necessary to implement the Streamlined Sales and Use Tax Agreement. Rules include: use of the lowest tax rate within a database; permissible categories of exemptions; a requirement for the uniformity in the filing of returns and remittance of funds; allocations of bad debts; purchaser refund provision; relief from liability for reliance on the Department’s taxability matrix; effective dates of taxation rate increases or decreases when certain services are furnished; and the prospective application only of defining “retail sale” to include a lease or rental.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than May 30, 2005, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 17, 2005. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by May 17, 2005.

These amendments are intended to implement Iowa Code chapter 423.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

## REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Amend rule 701—231.14(423) as follows:

**701—231.14(423) Exclusion from tax for property delivered by certain media.** A taxable “sale” of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is also applicable to any leasing of tangible personal property, since a lease is classified as a “sale” of tangible personal property for the purposes of Iowa sales and use tax law. The exclusion is also not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, “canned” software (reference 701—subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. Reference rule 701—26.56(422,423). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

*The department considers delivery of tangible personal property to a purchaser by way of a “load and leave” transaction to be delivery by the use of conventional physical means. The sales price from the purchase of property delivered through a load and leave transaction is not exempt from tax under this rule. “Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.*

This rule is intended to implement Iowa Code subsection 423.3(66) and Iowa Code chapter 423, subchapter IV.

ITEM 2. Amend subrules 231.15(1), 231.15(2) and 231.15(4) to 231.15(6) as follows:

**231.15(1) Definitions.** The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

“Accessories” include but are not limited to jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

“Clothing or footwear” means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

“Eligible property” means an item of a type, such as clothing, that qualifies for Iowa’s sales tax holiday.

“Special clothing or footwear” is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

**231.15(2) Exempt sales.**

a. *Required price.* The exemption applies to each article of clothing or footwear selling for less than \$100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for \$80 each, both items qualify for the exemption even though the customer’s total purchase price (\$160) exceeds \$99.99. The exemption does not apply to the first \$99.99 of an article of clothing or footwear selling for more than \$99.99. For exam-

ple, if a customer purchases a pair of pants costing \$110, sales tax is due on the entire \$110.

b. *Order date and back orders.* For the purpose of the sales tax holiday, eligible property qualifies for exemption if: the item is both delivered to and paid for by the customer during the exemption period; or the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an “in date” stamp on a mail order or assignment of an “order number” to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

**231.15(4) Special situations.**

a. and b. No change.

c. *Layaway sales.* A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. Under Iowa sales tax law, a sale of tangible personal property occurs when a purchaser takes delivery of tangible personal property in return for a consideration. Therefore, if a customer takes delivery of qualifying clothing or footwear during the exemption period (usually by taking possession of it; reference Reference rule 701—16.22(422,423) for general information on layaway sales) that sale of eligible clothing will qualify for the exemption. A sale of eligible property under a layaway sale qualifies for exemption if: final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

d. *Returns.* For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller’s policy on the time period during which the seller will accept returns.

e. *Different time zones.* The time zone of the seller’s location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and the seller is located in another.

**231.15(5) Calculating taxable and exempt sales price—**discounts, coupons, buying at a reduced price, and rebates.

a. No change.

b. *Coupons.* When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount, regardless of whether the retailer is reimbursed for the amount represented by the coupon if the retailer is not reimbursed for the coupon amount by a third party. Therefore, a retailer’s coupon can be used to reduce the sales price of an item to \$99.99 or less in order to qualify for the exemption.

## REVENUE DEPARTMENT[701](cont'd)

For example, if a customer purchases a pair of shoes priced at \$110 with a coupon worth \$20 off, the final sales price of the shoes is \$90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item. Reference 701—subrule 15.6(3).

c. to e. No change.

**231.15(6)** Treatment of various transactions associated with sales.

a. Rain checks. *A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.* Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for the same a similar eligible item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE. A customer purchases a \$35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the \$35 price of the shirt.

(2) to (4) No change.

ITEM 3. Adopt the following new chapter:

## CHAPTER 240

RULES NECESSARY TO IMPLEMENT THE  
STREAMLINED SALES AND USE TAX AGREEMENT

**701—240.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used.** Any database maintained by the department which displays tax rates and tax jurisdictional boundaries based on either a five-digit or nine-digit zip code system shall, if an area encompassing one zip code has two or more rates of tax, provide to retailers a means of identifying and applying the lowest rate within the area for use in computing tax due. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the lowest rate for the five-digit zip code area.

This rule is intended to implement 2005 Iowa Code section 423.55.

**701—240.2(423) Permissible categories of exemptions.****240.2(1) Definitions.**

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product.

“Product-based exemption” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Use-based exemption” means an exemption based on the purchaser's use of the product.

**240.2(2) Product-based exemptions.** Iowa will enact a product-based exemption without restriction only if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, Iowa will exempt all items included within the definition but will not exempt only part of the items included within the

definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

**240.2(3) Entity-based and use-based exemptions.** Iowa will enact an entity-based or a use-based exemption without restriction only if the agreement has no definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, Iowa will enact an entity-based or a use-based exemption that applies to that product only if the exemption utilizes the agreement's definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, Iowa has the power to enact an entity-based or a use-based exemption for the product without restriction.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

**701—240.3(423) Requirement of uniformity in the filing of returns and remittance of funds.** Any model 1, 2, or 3 seller may submit its sales or use tax returns in a simplified format that does not include more data fields than permitted by the governing board. The department will require only one remittance for each return except as otherwise allowed by the agreement. If any additional remittance is required, it will only be required from sellers that have collected more than \$30,000 in sales and use taxes in Iowa during the preceding calendar year. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

**701—240.4(423) Allocation of bad debts.** If a seller is entitled under the provisions of 2005 Iowa Code section 423.21 to deduct bad debts owed to it and those bad debts consist of any sales price or purchase price upon which tax has been paid to the state of Iowa as well as a state or states other than Iowa, then allocation of the bad debt is allowed. The seller must support an allocation of the bad debts between Iowa and the other state or states through the proper accounting of its books and records.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

**701—240.5(423) Purchaser refund procedures.** Iowa law allows a purchaser to seek a return of overcollected sales or use taxes from the seller who collected them. See 2005 Iowa Code subsection 423.45(2). In connection with any purchaser's request of a seller that the seller return sales or use tax alleged to have been overcollected, the seller to whom the request is directed shall be rebuttably presumed to have a reasonable business practice if, in the collection of such sales or use tax, the seller uses either a provider or a system, including a proprietary system, which is certified by this state; and has remitted all taxes collected by the use of that provider or system to the department, less any deductions, credits, or collection allowances.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

**701—240.6(423) Relief from liability for reliance on taxability matrix.** Iowa provides and maintains a taxability matrix in a database that is in a downloadable format approved by the governing board. All sellers and certified service providers are relieved from liability to Iowa and any jurisdiction



## REVENUE DEPARTMENT[701](cont'd)

imposing a local option tax under Iowa Code chapter 423B or 423E for having charged and collected the incorrect amount of sales or use tax resulting from the seller's or certified service provider's reliance on erroneous data provided by that taxability matrix.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

**701—240.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished.** Certain taxable services are usually furnished over an extended period of time (e.g., utilities, janitorial, and ministorage services), and the user of such a service is billed at regular intervals (e.g., monthly or quarterly). The beginning date when a rate change is imposed on the sales price of this type of service differs, depending upon whether a rate increase or rate decrease is involved. If the rate of taxation has been increased, the beginning date of the rate change shall be the first day of the first billing period occurring after the effective date of the rate increase. If the rate of taxation has been decreased, the beginning date of the rate change shall be the date on which the first bill for furnishing the service is rendered for payment, subsequent to the effective date of the rate decrease.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

**701—240.8(423) Prospective application of defining "retail sale" to include a lease or rental.** The definition of "retail sale" which includes leasing or renting (see 701—Chapter 211) is applied only prospectively from the date of July 1, 2004, and will have no retroactive impact on leases or rentals existing prior to that date. This definition of "retail sale" does not impact any Iowa exemption or exclusion in force prior to July 1, 2004, and applicable to a sale-leaseback transaction, nor does the definition preclude this state from adopting a sale-leaseback exemption or exclusion after July 1, 2004.

This rule is intended to implement 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 205.

## NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for April is 6.25%.

### INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants . . . . . Maximum 6.0%  
74A.4 Special Assessments . . . . . Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of

the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective April 13, 2005, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

### TIME DEPOSITS

7-31 days . . . . .	Minimum 1.10%
32-89 days . . . . .	Minimum 1.50%
90-179 days . . . . .	Minimum 1.75%
180-364 days . . . . .	Minimum 2.15%
One year to 397 days . . . . .	Minimum 2.45%
More than 397 days . . . . .	Minimum 3.70%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

## NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

May 1, 2004 — May 31, 2004	5.75%
June 1, 2004 — June 30, 2004	6.25%
July 1, 2004 — July 31, 2004	6.75%
August 1, 2004 — August 31, 2004	6.75%
September 1, 2004 — September 30, 2004	6.50%
October 1, 2004 — October 31, 2004	6.25%
November 1, 2004 — November 30, 2004	6.25%
December 1, 2004 — December 31, 2004	6.00%
January 1, 2005 — January 31, 2005	6.25%
February 1, 2005 — February 28, 2005	6.25%
March 1, 2005 — March 31, 2005	6.25%
April 1, 2005 — April 30, 2005	6.25%
May 1, 2005 — May 31, 2005	6.50%

**ARC 4123B****ADMINISTRATIVE SERVICES  
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 1, "Department Organization," Iowa Administrative Code.

These amendments reflect modifications to the organization of the Department of Administrative Services that will help meet the Department's strategic goals of improving customer service, saving money, streamlining operations, and enhancing resource flexibility.

Notice of Intended Action was published as **ARC 4008B** in the March 2, 2005, Iowa Administrative Bulletin. No public comment was received on these amendments. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 4009B**, with an effective date of February 1, 2005.

One change has been made to the amendments that were published under Notice of Intended Action and Adopted and Filed Emergency. The name of the General Services Enterprise Fleet, Mail and Print Division has been corrected.

The Department of Administrative Services adopted these amendments on April 6, 2005.

These amendments shall become effective June 1, 2005.

These amendments are intended to implement Iowa Code chapter 8A and sections 7E.5 and 17A.3.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.1 to 1.4, 1.7] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 4008B** and Adopted and Filed Emergency as **ARC 4009B**, IAB 3/2/05.

[Filed 4/7/05, effective 6/1/05]

[Published 4/27/05]

[For replacement pages for IAC, see IAC Supplement 4/27/05.]